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No. 1315

In the Supreme Court of the United States

OCTOBER TERM, 1967

WILLIAM WARREN DUNCAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted after a trial by jury in the United States District Court for the District of Arizona on the two counts of an indictment which charged that he received and concealed two different stolen motor vehicles moving in interstate commerce, in violation of 18 U.S.C. 2313.[1] On January 9, 1967, he was sentenced to five years' imprisonment on each count, the sentences to run concurrently, and a $500 fine was imposed on each count. The court of appeals affirmed (Pet. App. A).

The sole issue raised by petitioner is whether the district court improperly denied a motion for a bill

[1] The case of Judson Rainey, who was also charged in the indictment, was severed, at petitioner's request, prior to trial.

of particulars filed under Rule 7(f), F.R. Crim. P. The indictment gave the date of each offense, described the automobile involved in count one as a 1961 Chevrolet Impala which was moving from Los Angeles, California, to Phoenix, Arizona, and the vehicle in count 2 as a 1964 Chevrolet Impala Supersport moving from Huntington Park, California to Pheonix. Prior to trial, petitioner filed a motion for a bill of particulars, seeking, *inter alia,* the name of the person from whom he allegedly received the vehicles, the serial numbers of the vehicles, and the specific place of alleged concealment (Pet. App. D). At a hearing on the motion, the trial judge refused to grant the motion, but encouraged counsel for the respective sides to confer with a view towards having the government make more information available to the defense (P.T. 2, 4–5).[2] Subsequently, petitioner's counsel was given the serial numbers and colors of the vehicles, the names of the owners and a more particularized description of the place of alleged receipt and concealment (1 R. 19).

Thereafter, at a pre-trial conference defense counsel offered to open his files to the government pursuant to Rule 17.1, if the government would do likewise. Counsel for the government declined the offer on the ground that revelation of the names of several witnesses might endanger their lives.

[2] "R." refers to the record in the court below; "P.T." refers to the transcript of the proceedings at the pre-trial conference; and "Tr." refers to the transcript of the trial proceedings, copies of which are on file with the Clerk of this Court.

At trial the government's chief witness was one Robert Menz who testified that he stole the cars involved in California and sold each of them to petitioner in Phoenix for $200 after petitioner had indicated he could use that type of car (Tr. 29–46).[3]

The claim that petitioner did not receive sufficient information to prepare his defense is without foundation. The indictment informed petitioner of the date of the offenses, the make of vehicles involved, and the route over which the vehicles were allegedly transported. In response to petitioner's motion for a bill of particulars, the government disclosed further the color and serial numbers of the vehicles, and their owners at the time they were stolen (see Pet. App. A, 13). Petitioner thus had sufficient information to be able to determine if he had in fact received the vehicles. Indeed, with that information he would know the one detail that was not formally revealed—the identity of the person from whom he received them. It is thus evident that petitioner was really seeking discovery of the government's evidence. Significantly, prior to trial petitioner specifically reserved the right to seek a continuance at trial if necessary to prepare an adequate defense. His failure to request such a continuance speaks for itself.

It is well settled that the purpose of Rule 7(f) is to require the disclosure of only those facts necessary to particularize the charge and prevent subse-

[3] One Vernon Hurst, who had earlier entered a plea of guilty to a related offense, testified that on his return from a trip in mid-October, he found the two cars in question parked in a lot near his residence (Tr. 72–77).

quent prosecution for the same offense. The rule does not require compulsory disclosure of the evidentiary details of the government's case. Moreover, the grant or denial of a motion for a bill of particulars rests within the sound discretion of the trial judge. See *Wilkins* v. *United States,* 376 F. 2d 552, 563 (C.A. 5), certiorari denied, 389 U.S. 964; *Ross* v. *United States,* 374 F. 2d 97, 103 (C.A. 8), certiorari denied, 389 U.S. 882; *Ray* v. *United States,* 367 F. 2d 258, 263 (C.A. 8), certiorari denied, 386 U.S. 913. As the court of appeals properly concluded, there was no abuse of that discretion here (see Pet. App. A, 13). Finally, petitioner was amply "informed of the nature and cause of the accusation" against him by virtue of all of the details brought to his counsel's attention. Thus, his contention that his Sixth Amendment rights were violated by the denial of his motion for a bill of particulars is without substance.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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